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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,756	04/13/2006	Hiroyoshi Kato	1691-0218PUS1	6847
2292 7590 04/09/2008 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER GREEN, ANTHONY J				
ART UNIT		PAPER NUMBER		
1793				
NOTIFICATION DATE		DELIVERY MODE		
04/09/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

### Office Action Summary

**Application No.**

10/575,756

**Applicant(s)**

KATO ET AL.

**Examiner**

Anthony J. Green

**Art Unit**

1793

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3, 4 and 6-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3, 4 and 6-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. This office action is in response to the amendments submitted on 30 January 2008. Claims 1-2 and 5 have been canceled and new claims 6-15 have been added, accordingly claims 3-4 and 6-15 are currently pending.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 3-4 and 6-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent Specification No. JP 2001-233661 A in view of Lin (US Patent No. 5,518,980 A) for the reasons set forth in the previous office action and which are herein incorporated by reference.

Applicant argues that the instant claims are not rendered obvious as there is no motivation to combine the references and even if these references are combined together they still fail to suggest the present invention achieving excellent properties as the specification shows that the use of very fine calcium hydroxide particles produces unexpected superior results (i.e. when the particle diameter of the calcium hydroxide

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particles in use is larger than 3 microns, the initial and final setting times become quite long).

It is the position of the examiner that applicants arguments are not commensurate in scope with the claims as applicant is arguing properties that are not claimed. With respect to applicant arguments concerning that the Lin reference is not relevant art it is cited to show that calcium hydroxide slurries having small particle size ranges are known. Further paragraph [0038] of the Japanese reference teaches that the accelerating agent should be in powder form or a slurry. Accordingly the instant claims are still seen to be rendered obvious by combination of references.

4. Claims 3-4 and 6-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kikuchi et al (US Patent No. 4,650,523 A) in view of Lin (US Patent No. 5,518,980 A) for the reasons set forth in the previous office action and which are herein incorporated by reference.

Applicant argues that the instant claims are not rendered obvious as there is no motivation to combine the references and even if these references are combined together they still fail to suggest the present invention achieving excellent properties as the specification shows that the use of very fine calcium hydroxide particles produces unexpected superior results (i.e. when the particle diameter of the calcium hydroxide particles in use is larger than 3 microns, the initial and final setting times become quite long).

It is the position of the examiner that applicants arguments are not commensurate in scope with the claims as applicant is arguing properties that are not claimed. With respect to applicant arguments concerning that the Lin reference is not relevant art it is cited to show that calcium hydroxide slurries having small particle size ranges are known. Accordingly the instant claims are still seen to be rendered obvious by the combination of references

5. Claims 3-4 and 6-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simeonov et al (US Patent No. 4,205,998 A) in view of Lin (US Patent No. 5,518,980 A) for the reasons set forth in the previous office action and which are herein incorporated by reference.

Applicant argues that the instant claims are not rendered obvious as there is no motivation to combine the references and even if these references are combined together they still fail to suggest the present invention achieving excellent properties as the specification shows that the use of very fine calcium hydroxide particles produces unexpected superior results (i.e. when the particle diameter of the calcium hydroxide particles in use is larger than 3 microns, the initial and final setting times become quite long).

It is the position of the examiner that applicants arguments are not commensurate in scope with the claims as applicant is arguing properties that are not claimed. With respect to applicant arguments concerning that the Lin reference is not relevant art it is cited to show that calcium hydroxide slurries having small particle size

ranges are known. Accordingly the instant claims are still seen to be rendered obvious by the combination of references.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 10 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 10 the phrase "wherein any calcium aluminate present in said cement" is vague and indefinite and lacks proper antecedent basis as claim 3 does not recite that any calcium aluminate is present.

In claim 15 the phrase "wherein any calcium aluminate present in said cement" is vague and indefinite and lacks proper antecedent basis as claim 4 does not recite that any calcium aluminate is present.

### ***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony J. Green whose telephone number is 571-272-1367. The examiner can normally be reached on Monday-Thursday 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Anthony J. Green/

Primary Examiner  
Art Unit 1793

ajg  
April 3, 2008